(k) *Secondary or tertiary production.* For purposes of section 613A the term *secondary or tertiary production* means the increased production of domestic crude oil or natural gas from a property at any time after the application of a secondary or tertiary process. The increased production is the excess of actual production over the maximum primary production which would have resulted during the taxable year if the secondary or tertiary process had not been applied. The increased production may be due to an increase in either the rate or the duration of recovery. A secondary or tertiary process is a process applied for the recovery of hydrocarbons in which liquids, gases, or other matter is injected into the reservoir to supplement or augment the natural forces required to move the hydrocarbons through the reservoir. However, no process which must be introduced early in the productive life of the mineral property in order to be reasonably effective (such as cycling of gas in the case of a gas-condensate reservoir) is a secondary or tertiary process. A process (such as fire flooding or miscible fluid injection) introduced early in the productive life of the mineral property will not be disqualified as a secondary or tertiary process if a later introduction of the process in the property would still have been reasonably effective.

(l) *Controlled group of corporations.* The term *controlled group of corporations* has the meaning given to such term by section 1563(a), except that section 1563(b)(2) shall not apply and except that ''more than 50 percent'' shall be substituted for '' at least 80 percent'' each place it appears in section 1563(a).

(m) *Related person.* (1) A person is a *related person* to another person, within the meaning of section 613A(d) (2) and (4), paragraphs (b) and (c) of §1.613A–4, and paragraphs (r) and (s) of this section, if either a significant ownership interest in such person is held by the other, or a third person has a significant ownership interest in both such persons. For purposes of determining a significant ownership interest, an interest owned by or for a corporation, partnership, trust, or estate shall be considered as owned directly both by itself and proportionately by its shareholders, partners, or beneficiaries, as the case may be. The term *significant ownership* means—

(i) With respect to any corporation, direct or indirect ownership of 5 percent or more in value of the outstanding stock of such corporation,

(ii) With respect to a partnership, direct or indirect ownership of 5 percent or more interest in the profits or capital of such partnership, and

(iii) With respect to an estate or trust, direct or indirect ownership of 5 percent or more of the beneficial interests in such estate or trust. The relative percentage ownership of beneficiaries of an estate or trust in the beneficial interests therein shall be determined under actuarial principles.

(2) A person is a ''related person'' to another person, within the meaning of section 613A(c)(8)(B) and paragraph (h)(2) of §1.613A–3, if such persons are members of the same controlled group of corporations or if the relationship between such persons would result in a disallowance of losses under section 267 or 707(b), except that for this purpose the family of an individual includes only the individual's spouse and minor children.

(n) *Transfer.* The term *transfer* means any change in ownership for federal tax purposes after December 31, 1974, by sale, exchange, gift, lease, sublease, assignment, contract, or other disposition (including any contribution to or any distribution by a corporation, partnership, or trust), any change in the membership of a partnership or the beneficiaries of a trust, or any other change by which a taxpayer's proportionate share of the income subject to depletion of an oil or gas property is increased. For taxable years beginning after 1982, the term ''transfer'' includes an election by a C corporation to be an S corporation (properties deemed transferred by the C corporation on the day the election first becomes effective) and a termination of an S election (each shareholder's pro rata share of assets of S corporation deemed transferred to C corporation on the day that the termination first becomes effective). However, the term does not include—

(1) A transfer of property at death (including a distribution by an estate, whether or not a pro rata distribution),

(2) An exchange to which section 351 applies,

(3) A change of beneficiaries of a trust by reason of the death, birth, or adoption of any vested beneficiary if the transferee was a beneficiary of the trust or is a lineal descendant of the settlor or any other vested beneficiary of the trust, except in the case of any trust where any beneficiary of the trust is a member of the family (as defined in section 267(c)(4)) of a settlor who created inter vivos and testamentary trusts for members of the family and the settlor died within the last six days of the fifth month in 1970, and the law in the jurisdiction in which the trust was created requires all or a portion of the gross or net proceeds of any royalty or other interest in oil, gas, or other mineral representing any percentage depletion allowance to be allocated to the principal of the trust,

(4) A transfer of property between corporations which are members of the same controlled group of corporations (as defined in section 613A(c)(8)(D)(i)),

(5) A transfer of property between business entities which are under common control (within the meaning of section 613A(c)(8)(B)) or between related persons in the same family (within the meaning of section 613A(c)(8)(C)),

(6) A transfer of property between a trust and members of the same family (within the meaning of section 613A(c)(8)(C)) to the extent that both (i) the beneficiaries of the trust are and continue to be members of the family that transferred the property, and (ii) the tentative oil quantity is allocated among the members of such family,

(7) A reversion of all or part of an interest with respect to which the taxpayer was eligible for percentage depletion pursuant to section 613A(c), or

(8) A conversion of a retained interest which is eligible for such depletion into an interest which constituted all or part of an interest previously owned by the taxpayer also eligible for such depletion.

However, paragraph (n) (2), (4), and (5) of this section shall apply only so long as the tentative quantity determined under the table contained in section 613A(c)(3)(B) (as in effect prior to the Revenue Reconciliation Act of 1990) is required to be allocated under section 613A(c)(8) between the transferor and transferee, or among members of a controlled group of corporations. In the case of an individual transferor, the allocation test of the preceding sentence shall not be failed merely because of the death of the transferor. For purposes of paragraph (n) (3) and (6), an individual adopted by a beneficiary is a lineal descendant of that beneficiary. For purposes of paragraph (n) (7) and (8), a taxpayer previously ineligible for percentage depletion solely by reason of section 613A(d) (2) or (4) will be considered to have been eligible for such depletion. A transfer is deemed to occur on the day on which a contract or other commitment to transfer the property becomes binding upon both the transferor and transferee, or, if no such contract or commitment is made, on the day on which ownership of the interest in oil or gas property passes to the transferee.

(o) *Transferee.* The term ''transferee'', as used in section 613A(c)(9), paragraph (i)(1) of §1.613A–3, and this section includes the original transferee of proven property and his or her successors in interest (excluding successors in interest of proven property transferred after October 11, 1990). A person shall not be treated as a transferee of an interest in a proven oil or gas property to the extent that such person was entitled to a percentage depletion allowance on mineral produced with respect to the property immediately before the transfer. However, a person shall be treated as a transferee of an interest in a proven property to the extent that the interest such person receives is greater than the interest in the property the person held immediately before the transfer. For example, where the owner of a proven oil property transfers his or her entire interest therein to a partnership of which he or she is a member and, as a consequence, becomes entitled to a depletion allowance based on only one-third of the oil produced with respect to that property, the owner (the transferor) is not denied percentage depletion with respect to the one-third interest in oil production which

the owner still possesses. If the partnership agreement had made an effective allocation (under section 704 and § 1.704.1) of all the income in respect of such property to the transferor partner, that partner would be entitled to percentage depletion on the entire oil production from that property. For this purpose, a person who has transferred oil or gas property pursuant to a unitization or pooling agreement shall be treated as having been entitled to a depletion allowance immediately before the transfer to that person of the interest in the unit or pool with respect to all of the mineral in respect of which the person receives gross income from the property pursuant to the unitization or pooling agreement, except to the extent such income is attributable to consideration paid by that person for such interest in addition to that person's contribution of the oil or gas property and equipment affixed thereto.

(p) *Interest in proven oil or gas property.* The term *interest in an oil or gas property* means an economic interest in oil or gas property. An economic interest includes working or operating interests, royalties, overriding royalties, net profits interests, and, to the extent not treated as loans under section 636, production payments from oil or gas properties. The term also includes an interest in a partnership, S corporation, small business corporation, or trust holding an economic interest in oil or gas property but does not include shares of stock in a corporation (other than an S corporation and small business corporation) owning such an interest. An oil or gas property is ''proven'' if its principal value has been demonstrated by prospecting, exploration, or discovery work. The principal value of the property has been demonstrated by prospecting, exploration, or discovery work only if at the time of the transfer—

(1) Any oil or gas has been produced from a deposit, whether or not produced by the taxpayer or from the property transferred;

(2) Prospecting, exploration, or discovery work indicate that it is probable that the property will have gross income from oil or gas from the deposit sufficient to justify development of the property; and

(3) The fair market value of the property is 50 percent or more of the fair market value of the property, minus actual expenses of the transferee for equipment and intangible drilling and development costs, at the time of the first production from the property subsequent to the transfer and before the tansferee transfers his or her interest.

For purposes of this paragraph, the property is to be determined by applying section 614 and the regulations thereunder to the transferee at the time of the transfer. If the transfer is of an interest in a partnership, S corporation, small business corporation, or trust, the determination shall be made with respect to each property owned by the partnership, S corporation, small business corporation, or trust. The term *prospecting, exploration, or discovery work* includes activities which produce information relating to the existence, location, extent, or quality of any deposit of oil or gas, such as seismograph surveys and drilling activities (whether for exploration or for the production of oil or gas).

(q) *Amount disallowed.* The amount disallowed, within the meaning of section 613A(d)(1) and paragraph (a) of § 1.613A–4, is the excess of the amount of the aggregate of the taxpayer's allowable depletion deductions (whether based upon cost or percentage depletion) computed without regard to section 613A(d)(1) over the amount of the aggregate of such deductions computed with regard to such section. The disallowed amount shall be carried over to the succeeding year and treated as an amount allowable as a deduction pursuant to section 613A(c) for the succeeding year, subject to the 65-percent limitation of section 613A(d)(1) and the rules contained in § 1.613A–4(a).

(r) *Retailer.* (1) Except as otherwise provided in paragraph (r)(2) of this section, the term *retailer* means any taxpayer who directly, or through a related person (as defined in paragraph (m)(1) of this section), sells oil or natural gas, or any product derived from oil or natural gas—

(i) Through any retail outlet operated by the taxpayer or a related person, or

(ii) To any person—

(A) Obligated under an agreement or contract with the taxpayer or a related person to use a trademark, trade name, or service mark or name owned by such taxpayer or a related person, in marketing or distributing oil or natural gas or any product derived from oil or natural gas, or

(B) Given authority, pursuant to an agreement or contract with the taxpayer or a related person, to occupy any retail outlet owned, leased, or in any way controlled by the taxpayer or a related person.

For purposes of the preceding sentence, bulk sales (*i.e.,* sales in very large quantities) of oil or natural gas (but not bulk sales of any product derived from oil or natural gas) to commercial or industrial users shall be disregarded. Bulk sales made after September 18, 1982, of aviation fuels to the Department of Defense shall be also disregarded. In addition, sales of oil or natural gas (whether or not produced by the taxpayer), or of any product derived from oil or natural gas, which are made outside the United States shall be disregarded if no domestic production of oil, natural gas (or products derived therefrom) of the taxpayer or a related person is exported during the taxable year or the immediately preceding taxable year.

(2) Notwithstanding paragraph (r)(1) of this section, the taxpayer shall not be considered a retailer in any case where, during the taxable year of the taxpayer, the combined gross receipts from sales (excluding sales for resale) of oil or natural gas, or products derived therefrom, of all retail outlets taken into account under paragraph (r)(1) of this section (including sales through a retail outlet of oil, natural gas, or a product derived from oil or natural gas which had previously been the subject of a sale described in paragraph (r)(1)(ii) of this section) do not exceed $5 million. If the taxpayer's combined gross receipts for the taxable year exceed $5 million, the taxpayer will be treated as a retailer as of the first day in which a retail sale was made. For purposes of paragraph (r)(1) of this section, a taxpayer shall be deemed to be selling oil or natural gas (or a product derived therefrom) through a related person in any case in which any sale of oil or natural gas (or a derivative product) by the related person produces gross income from which the taxpayer may benefit by reason of the taxpayer's direct or indirect ownership interest in the related person. In such cases (and in any other case in which the taxpayer is selling through a retail outlet referred to in section 613A(d)(2)(A) or is selling such items to a person described in section 613A(d)(2)(B)), it is immaterial whether the oil or natural gas which is sold, or from which is derived a product which is sold, was produced by the taxpayer. A taxpayer shall be deemed to be selling oil or natural gas (or a derivative product) through a retail outlet operated by a related person in any case in which a related person who operates a retail outlet acquires for resale oil or natural gas (or a derivative product) which the taxpayer produced or caused to be made available for acquisition by the related person pursuant to an arrangement whereby some or all of the taxpayer's production is marketed. An owner of a nonoperating mineral interest (such as a royalty) shall not be treated as an operator of a retail outlet merely because the owner's oil or gas is sold on the owner's behalf through a retail outlet operated by an unrelated person. In addition, the mere fact that a member of a partnership is a retailer shall not result in characterization of the remaining partners as retailers. However, any partner of a partnership who has a 5 percent or more interest in any entity actually engaging in retail activities (including the partnership or another entity to which the partnership is related) is treated as a retailer. See paragraph (m)(1) of this section for rules on the ownership interest by partners in an entity related to a partnership. Similarly, if a trust or estate is a retailer, only its beneficiaries having a 5 percent or more current income interest from the trust or estate are treated as retailers. A person who is a retailer during a portion of the taxable year shall be treated as a retailer with respect to a fraction of that person's gross and taxable income from oil or gas properties for the taxable year, the numerator of which is the number of days during the taxable year in which

the taxpayer is a retailer and the denominator of which is the total number of days during the taxable year; except that a person who ceases to be a retailer during the taxable year before the first production of oil or gas during such year shall not be treated as a retailer for any portion of such year.

(3) For purposes of this paragraph (r), the term *any product derived from oil or natural gas* means gasoline, kerosene, Number 2 fuel oil, refined lubricating oils, diesel fuel, butane, propane, and similar products which are recovered from petroleum refineries or extracted from natural gas in field facilities or natural gas processing plants. The term *retail outlet* means any place where sales of oil or natural gas (excluding bulk sales of such items to commercial or industrial users), or a product of oil or natural gas (excluding bulk sales of aviation fuels to the Department of Defense), accounting for more than 5 percent of the gross receipts from all sales made at such place during the taxpayer's taxable year, are systematically made for any purpose other than for resale. For this purpose, sales of oil or natural gas, or any product derived from oil or natural gas, to a person for refining are considered as sales made for resale.

(s) *Refiner.* A person is a refiner if such person or a related person (as defined in paragraph (m)(1) of this section) engages in the refining of crude oil (whether or not owned by such person or related person) and if the total refinery runs of such person and any related persons exceed 50,000 barrels on any day during the taxable year. A refinery run is the volume of inputs of crude oil (excluding any product derived from oil) into the refining stream. For purposes of this paragraph, crude oil refined outside the United States shall be taken into account. Refining is any operation by which the physical or chemical characteristics of crude oil are changed, exclusive of such operations as passing crude oil through separators to remove gas, placing crude oil in settling tanks to recover basic sediment and water, dehydrating crude oil, and blending of crude oil products.

[T.D. 8348, 56 FR 21949, May 13, 1991; 57 FR 4913, Feb. 10, 1992, as amended by T.D. 8437, 57 FR 43903, Sept. 23, 1992; 58 FR 6678, Feb. 1, 1993]

§1.614–0 Introduction.

Section 614 relates to the definition of property and to the various special rules by means of which taxpayers are permitted to aggregate or combine separate properties or to treat such properties as separate. These rules are set forth in detail in §§1.614–1 through 1.614–8. Section 1.614–1 sets forth rules under section 614(a) relating to the definition of the term *property*. Section 1.614–2 contains the rules relating to the election under section 614(b), as it existed prior to its amendment by section 226(a) of the Revenue Act of 1964, to aggregate operating mineral interests. In the case of mines, the rules contained in §1.614–2 are applicable only to taxable years beginning before January 1, 1958, to which the Internal Revenue Code of 1954 applies. In the case of oil and gas wells, the rules contained in §1.614–2 are applicable only to taxable years beginning before January 1, 1964, to which the Internal Revenue Code of 1954 applies. In the case of oil and gas wells, the taxpayer may, however, for taxable years beginning before January 1, 1964, treat any operating mineral interests as if section 614 (a) and (b) (as it existed prior to its amendment by section 226(a) of the Revenue Act of 1964) had not been enacted. If any operating mineral interests are so treated, the rules contained in §1.614–2 are not applicable to such interests and such interests are, in respect of taxable years beginning before January 1, 1964, subject to the rules set forth in §1.614–4 relating to the Internal Revenue Code of 1939 treatment of separate operating mineral interests in the case of oil and gas wells. Section 1.614–3 prescribes the rules relating to the election under section 614(c)(1) permitting the aggregation of operating mineral interests in the cases of mines for taxable years beginning after December 31, 1957. Section 1.614–3 also

sets forth rules relating to the election under section 614(c)(2) in the case of mines by means of which a taxpayer is permitted to treat a single operating mineral interest as more than one such interest for taxable years beginning after December 31, 1957. At the election of the taxpayer with respect to an operating unit, the rules contained in § 1.614–3 are also applicable to taxable years beginning before January 1, 1958, to which the Internal Revenue Code of 1954 applies. If the taxpayer makes such an election, the rules contained in § 1.614–2 are not applicable to any of the operating mineral interests which are part of the operating unit with respect to which the election described in § 1.614–3 is made. Section 1.614–5 sets forth the rules relating to the aggregation of nonoperating mineral interests. Section 1.614–6 contains the rules relating to basis, holding period, and abandonment and casualty losses where properties have been aggregated or combined. Section 1.614–7 relates to the extension of time for performing certain acts. Section 1.614–8 contains the rules relating to the elections under section 614(b) as amended by section 226(a) of the Revenue Act of 1964 to treat separate operating mineral interests in the case of oil and gas wells as separate properties or in combination for taxable years beginning after December 31, 1963.

[T.D. 6859, 30 FR 13699, Oct. 28, 1965]

§ 1.614–1 Definition of property.

(a) *General rule.* (1) For purposes of subtitle A of the Code, in the case of mines, wells, and other natural deposits, the term *property* means each separate interest owned by the taxpayer in each mineral deposit in each separate tract or parcel of land.

(2) The term *interest* means an economic interest in a mineral deposit. See paragraph (b) of § 1.611–1. The term includes working or operating interests, royalties, overriding royalties, net profits interests, and, to the extent not treated as loans under section 636, production payments.

(3) The term *tract or parcel of land* is merely descriptive of the physical scope of the land to which the taxpayer's interest relates. It is not descriptive of the nature of his rights or interests in the land. All contiguous areas (even though separately described) included in a single conveyance or grant or in separate conveyances or grants at the same time from the same owner constitute a single separate tract or parcel of land. Areas included in separate conveyances or grants (whether or not at the same time) from separate owners are separate tracts or parcels of land even though the areas described may be contiguous. If the taxpayer's rights or interests within the same tract or parcel of land are dissimilar, then each such dissimilar interest constitutes a separate property. If the taxpayer's rights or interests (whether or not dissimilar) within the same tract or parcel of land relate to more than one separate mineral deposit, then his interest with respect to each such separate deposit is a separate property.

(4) Upon the transfer of a *property* in any transaction in which the basis of such property in the hands of the transferee is determined by reference to the basis of such property in the hands of the transferor, such property shall, notwithstanding the provisions of subparagraph (3) of this paragraph, retain the same status and identity in the hands of the transferee as it had in the hands of the transferor. See paragraph (c) of § 1.614–6 if the transferor has made a binding election to treat a separate mineral interest as a separate property, to treat a separate mineral interest as more than one property under section 614(c), or to treat two or more separate mineral interests as an aggregated or combined property under section 614(b) (as it existed either before or after its amendment by section 226(a) of the Revenue Act of 1964), (c), or (e).

(5) The provisions of this paragraph may be illustrated by the following examples:

Example 1. A taxpayer owns one tract of land under which lie three separate and distinct seams of coal. Therefore, the taxpayer owns three separate mineral interests each of which constitutes a separate property.

Example 2. A taxpayer conducts mining operations on eight tracts of land as a single unit. He acquired his interests in each of the eight tracts from separate owners. Even if each tract of land contains part of the same mineral deposit, the taxpayer owns eight

separate mineral interests each of which constitutes a separate property.

Example 3. A taxpayer owns a tract of land under which lies one mineral deposit. The taxpayer operates a well on part of the tract and leases to another operator the mineral rights in the remainder retaining a royalty interest therein. The taxpayer thereafter owns two separate mineral interests each of which constitutes a separate property.

Example 4. In 1954, a taxpayer acquires from a single owner, in a single deed, three noncontiguous tracts of mineral land for a single consideration. Even if each tract contains part of the same mineral deposit, the taxpayer owns three separate mineral interests each of which constitutes a separate property.

Example 5. In 1954, taxpayer A simultaneously acquires in fee two contiguous tracts of mineral land from two separate owners. The same mineral deposit underlies both tracts. Thereafter, taxpayer A owns two separate mineral interests each of which constitutes a separate property.

Example 6. Assume that in 1955, taxpayer A, in example 5, leases the two contiguous tracts of mineral land that he acquired in 1954 to taxpayer B by means of a single lease. Thereafter, taxpayer B owns one mineral interest which constitutes a separate property for such time as the lease continues in existence.

Example 7. Assume that in 1955, taxpayer A, in example 5, sells at the same time all the mineral land he acquired in 1954 to taxpayer B. Thereafter, taxpayer B owns one mineral interest which constitutes a separate property. If taxpayer B acquires the mineral land in a transaction in which the basis of such mineral land in his hands is determined by reference to the basis of such mineral land in the hands of taxpayer A, then taxpayer B owns two separate mineral interests each of which constitutes a separate property.

Example 8. In 1954, taxpayer A simultaneously acquires two contiguous leasehold interests from two separate owners. The same mineral deposit underlies both tracts. Thereafter, taxpayer A owns two separate mineral interests each of which constitutes a separate property.

Example 9. In 1955, taxpayer A, in example 8, simultaneously assigns the two leases to taxpayer B. Thereafter, taxpayer B owns two separate mineral interests each of which constitutes a separate property.

(b) *Separation of interests treated as single property* under prior regulations. Each separate mineral interest which, in accordance with paragraph (a) of this section, is a separate property shall be so treated, notwithstanding the fact that the taxpayer under paragraph (i) of §39.23(m)–1 of this chapter (Regulations 118) and corresponding provisions of prior regulations may have treated more than one of such interests as a *single property*. The basis of each such separate property must be established by a reasonable method. See, however, section 614 (b) and (d) (as they existed prior to amendment by section 226 of the Revenue Act of 1964), section 614 (c) and (e), and §§1.614–2, 1.614–3, 1.614–4, and 1.614–5 for special rules relating to the treatment of two or more separate mineral interests as a single property.

(c) *Treatment of a waste bank or residue.* A waste bank or residue of prior mining, the extraction of ores or minerals from which is treated as mining under section 613(c)(3), shall not be considered to be a separate mineral deposit but is a part of the mineral deposit from which it was extracted. However, if the owner of such waste bank or residue has disposed of the deposit from which the waste bank or residue was accumulated, or if the waste bank or residue cannot practicably be attributed to a particular deposit of the owner, the waste bank or residue will be regarded as a separate deposit.

[T.D. 6524, 26 FR 147, Jan. 10, 1961, as amended by T.D. 6859, 30 FR 13699, Oct. 28, 1965; T.D. 7261, 38 FR 5467, Mar. 1, 1973]

§1.614–2 Election to aggregate separate operating mineral interests under section 614(b) prior to its amendment by Revenue Act of 1964.

(a) *General rule.* (1) The provisions of this section relate to the election, under section 614(b) prior to its amendment by section 226(a) of the Revenue Act of 1964, to aggregate separate operating mineral interests, and, unless otherwise indicated, all references in this section to section 614(b) or any paragraph or subparagraph thereof are references to section 614(b) or a paragraph or subparagraph thereof as it existed prior to such amendment. Notwithstanding the preceding sentence, the definitions contained in paragraphs (b) and (c) of this section shall apply both before and after such amendment. All references in this section to section 614(d) are references to section 614(d) as it existed prior to its amendment by

section 226(b)(3) of the Revenue Act of 1964.

(2) A taxpayer who owns two or more separate operating mineral interests, which constitute part or all of an operating unit, may elect under section 614(b) and this section to form one aggregation of any two or more of such operating mineral interests and to treat such aggregation as one property. Any operating mineral interest which the taxpayer does not elect to include within the aggregation within the time prescribed in paragraph (d) of this section shall be treated as a separate property. The aggregation of separate properties which results from exercising the election shall be considered as one property for all purposes of subtitle A of the Code. The preceding sentence does not preclude the use of more than one account under a single method of computing depreciation or the use of more than one method of computing depreciation under section 167, if otherwise proper. Any reasonable and consistently applied method or methods of computing depreciation of the improvements made with respect to the separate properties aggregated may be continued in accordance with section 167 and the regulations thereunder. Operating interests in different minerals which comprise part or all of the same operating unit may be included in the aggregation. It is not necessary for purposes of the aggregation that the separate operating mineral interests be included in a single tract or parcel of land or in contiguous tracts or parcels of land so long as such interests are a part of the same operating unit. Under section 614(b), a taxpayer cannot elect to form more than one aggregation of separate operating mineral interests within one operating unit. For definitions of *operating mineral interest* and *operating unit* see respectively paragraphs (b) and (c) of this section.

(b) *Operating mineral interest defined.* The term *operating mineral interest* means a separate mineral interest as described in section 614(a), in respect of which the costs of production are required to be taken into account by the taxpayer for purposes of computing the limitation of 50 percent of the taxable income from the property in determining the deduction for percentage depletion computed under section 613, or such costs would be so required to be taken into account if the mine, well, or other natural deposit were in the production stage. The term does not include royalty interests or similar interests, such as production payments or net profits interests. For the purpose of determining whether a mineral interest is an operating mineral interest, *costs of production* do not include intangible drilling and development costs, exploration expenditures under section 615, or development expenditures under section 616. Taxes, such as production taxes, payable by holders of nonoperating interests are not considered costs of production for this purpose. A taxpayer may not aggregate operating mineral interests and nonoperating mineral interests such as royalty interests.

(c) *Operating unit defined.* (1) The term *operating unit* refers to the operating mineral interests which are operated together for the purpose of producing minerals. An *operating unit* of a particular taxpayer must be determined on the basis of his own operations. It is recognized that operating units may not be uniform in the various natural resources industries or in any one of the natural resources industries, such as coal, oil and gas, and the like. As to a particular taxpayer, business reasons may require the formation of operating units that vary in size and content. The term *operating unit* refers to a producing unit, and not to an administrative or sales organization. Among the factors which indicate that mineral interests are operated together as a unit are:

(i) Common field or operating personnel,

(ii) Common supply and maintenance facilities,

(iii) Common processing or treatment plants, and

(iv) Common storage facilities.

However, operating mineral interests which are geographically widespread may not be treated as parts of the same operating unit merely because a single set of accounting records, a single executive organization, or a single sales force is maintained by the taxpayer with respect to such interests, or

merely because the products of such interests are processed at the same treatment plant.

(2) If aggregated, an undeveloped operating mineral interest shall be aggregated only with those interests with which it will be operated as a unit when it reaches the production stage.

(3) While a taxpayer may operate an operating mineral interest through an agent, a coowner may aggregate only his operating mineral interests that are actually operated as a unit. For example, if A owned and actually operated the entire working interest in lease X and also owned an undivided fraction of lease Y in which B owned the remaining interest and which B actually operated as a unit with lease Z, A may not aggregate his interest in lease X with his undivided interest in lease Y, since they are not actually operated as a unit.

(4) The determination of the taxpayer as to what constitutes an operating unit is to be accepted unless there is a clear and convincing basis for a change in such determination.

(d) *Manner and scope of election*— (1) *Election; when made.* (i) Except as provided in subparagraph (2)(ii) of this paragraph, the election under section 614(b) and paragraph (a) of this section to treat an mineral interest as part of an aggregation shall be made not later than the time prescribed by law for filing the taxpayer's income tax return (including extensions thereof), for whichever of the following taxable years is the later:

(a) The first taxable year beginning after December 31, 1953, and ending after August 16, 1954, or

(b) The first taxable year in which any expenditure for exploration, development, or operation in respect of the separate operating mineral interest is made by the taxpayer after the acquisition of such interest.

See, however, paragraph (c) of §1.614–6 as to the binding effect of an election where the basis of a separate operating mineral interest in the hands of the taxpayer is determined by reference to the basis in the hands of a transferor. The election under section 614(b) may not be made with respect to any taxable year beginning after December 31, 1957, except in the case of oil and gas wells. See paragraph (e) of this section for rules with respect to the termination of the election under section 614(b) except in the case of oil and gas wells. If an expenditure has been made in respect of a separate operating mineral interest, it is immaterial whether or not any proven deposit has been discovered with respect to such interest when such expenditure has been made. The provisions of this subdivision may be illustrated by the following example:

Example. Taxpayer A is producing from an oil and gas horizon and in 1958 he drills for the purpose of locating a deeper horizon which will be operated in the same operating unit as the upper producing horizon. At the end of the taxable year 1958 he has expended $50,000 drilling for the purpose of locating a deeper horizon although at such time there is no assurance that such a horizon will be found. If taxpayer A desires to aggregate the deeper horizon, if found, with the upper horizon under section 614(b), he must elect to do so in his return for 1958. If the election to aggregate the upper and lower horizons as one property is made, the drilling expenditures with respect to the prospective lower horizon must be taken into account along with the income and expenses with respect to the upper producing horizon in computing the depletion allowance on the aggregated property.

However, where expenditures for development of, or production from, a particular mineral deposit result in the discovery of another mineral deposit, the election with respect to such other deposit shall be made for the taxable year in which it is discovered and not for the taxable year in which the expenditures were first made which resulted in such discovery.

(ii) Except in the case of oil and gas wells, if a taxpayer fails to make an election under section 614(b) to aggregate a particular operating mineral interest on or before the time prescribed for the making of such election, such interest will be treated as if an election had been made under section 614(b) to treat it as a separate property and it cannot be included in any aggregation within the operating unit of which it is a part unless the taxpayer obtains the consent of the Commissioner. However, where the taxpayer owns more than one property within an operating unit, but has elected to treat such properties separately and one or more additional

operating mineral interests are subsequently acquired, any one or more of the latter may be aggregated with one of the existing separate properties within the operating unit but not with more than one of them since they cannot be validly aggregated with each other.

(iii) In the case of oil and gas wells, if the taxpayer fails to make an election under section 614(b) with respect to a particular operating mineral interest on or before the time prescribed for the making of such election, the taxpayer shall be deemed to have treated such interest under the provisions of section 614(d). See section 614(d) and § 1.614–4.

(iv) For purposes of section 614(b), the acquisition of an option to acquire an economic interest in minerals in place does not constitute the acquisition of a mineral interest. Thus, a taxpayer who makes expenditures for the exploration of minerals on a particular tract under an option to acquire an economic interest in minerals in place is not required to make an election with respect to such interest at that time. Furthermore, the election need not be made in the taxable year in which payments are made for the acquisition of a lease, such as the payment of a bonus, unless exploratory, development, or operation expenditures are made thereafter with respect to the property in that year.

(2) *Election; how made.* (i) The election under section 614(b) must be made by a statement attached to the income tax return of the taxpayer for the first taxable year for which the election is made. This statement shall indicate that the taxpayer is making an aggregation of separate operating mineral interests within an operating unit under section 614(b) and shall contain a description of the aggregation and describe the operating mineral interests within the operating unit which are to be treated as separate properties apart from the aggregation. A general description, accompanied by maps appropriately marked, which accurately circumscribes the scope of the aggregation and identifies the properties which are to be treated separately will be sufficient. The statement shall also contain a description of the operating unit in sufficient detail to show that the aggregated operating mineral interests are properly within a single operating unit. See paragraph (c) of this section. The taxpayer shall maintain adequate records and maps in support of the above information. In the event expenditures are first made on an operating mineral interest within an operating unit after an election with respect to the aggregation of interests in that operating unit has been made, the taxpayer shall furnish only information describing such operating mineral interest, its location in the operating unit, and whether it is to be included within the aggregation.

(ii) If the taxpayer made or did not make the election under section 614(b) with respect to a particular operating mineral interest and the last day prescribed by law for filing the return (including extensions of time therefor) on which the election was required to be made falls on or before May 1, 1961, consent is hereby given to the taxpayer to make or change the election not later than May 1, 1961. Any such election or change of such election shall be effective with respect to the earliest taxable year to which the election is applicable in respect of which assessment of a deficiency or credit or refund of an overpayment, as the case may be, resulting from such election or change is not prevented by any law or rule of law on the date such election or change is made. An election or change of election made pursuant to this subdivision shall be binding upon the taxpayer for the first taxable year for which it is effective and for all subsequent taxable years unless consent to a different treatment is obtained from the Commissioner. (See, however, paragraph (e) of this section for rules relating to the termination and nonapplicability of the election under section 614(b) except in the case of oil and gas wells.) Such election or change shall be made in the form of a statement setting forth the nature of the election or change, including information substantially the same as that required by subdivision (i) of this subparagraph, and shall be accompanied by an amended return or returns if necessary or, if appropriate, a claim for refund or credit. The appropriate documents must be filed on or

before May 1, 1961 with the district director for the district in which the original return was filed.

(3) *Election; when effective.* If a taxpayer has elected to aggregate an operating mineral interest, the date on which the aggregation becomes effective is the earliest date within the taxable year affected, on which the taxpayer incurred any expenditure for exploration, development, or operation of such interest. The application of this rule may be illustrated by the following examples:

Example 1. In 1953, a taxpayer owned and operated mineral interests Nos. 1, 2, and 3. All three interests form one operating unit. The taxpayer, who files his return on a calendar year basis, continued to own and operate these interests during the year 1954, and in his return for that year, filed on April 15, 1955, elected to aggregate these three interests. As the result of this election, the aggregation was effective for all purposes of subtitle A of the Code as of January 1, 1954.

Example 2. Assume that, on March 1, 1955, the taxpayer described in example 1 acquired operating mineral interest No. 4 which was also a part of the operating unit composed of operating mineral interests Nos. 1, 2, and 3, that he made his first expenditure for exploration with respect to operating mineral interest No. 4 on September 1, 1955, and that, in his return filed on April 15, 1956, he elected to aggregate operating mineral interest No. 4 with the aggregation consisting of Nos. 1, 2, and 3. As the result of that election, operating mineral interest No. 4 became a part of the aggregation for all purposes of subtitle of the Code on September 1, 1955.

(4) *Election; binding effect.* A valid election made under section 614(b) and this section shall be binding upon the taxpayer for the taxable year for which made and all subsequent taxable years unless consent to make a change is obtained from the Commissioner. However, see paragraph (e) of this section for rules with respect to the termination of the election under section 614(b) except in the case of oil and gas wells. For rules relating to the binding effect of an election where the basis of a separate or an aggregated property in the hands of the transferee is determined by reference to the basis in the hands of the transferor, see paragraph (c) of §1.614–6. A taxpayer can neither include within the aggregation a separate operating mineral interest which he had previously elected to treat separately, nor exclude from the aggregation a separate operating mineral interest previously included therein unless consent to do so is obtained from the Commissioner. A change in tax consequences alone is not sufficient to obtain consent to change the treatment of an operating mineral interest. However, consent may be appropriate where, for example, there has been a substantial change in the taxpayer's operations so that a major part of an aggregation becomes a part of another operating unit. Applications for consent shall be made in writing to the Commissioner of Internal Revenue, Washington, DC 20224. The application must be accompanied by a statement indicating the reason or reasons for the change and furnishing the information required under subdivision (i) of subparagraph (2) of this paragraph, unless such information has been previously filed and is current.

(5) *Invalid aggregations*—(i) *In general.* In addition to aggregations which are invalid under section 614(b) because of the failure to make timely elections, aggregations may be invalid under such section in situations which may be divided into two general categories. The first category involves basic aggregations which were timely but otherwise initially invalid. The second category involves invalid additions of operating mineral interests to basic aggregations which additions became subject to the election in years subsequent to the year in which the initial basic aggregation or aggregations were formed.

(ii) *Invalid basic aggregations.* The term *invalid basic aggregations* refers to those aggregations which are initially invalid. Generally, such basic aggregations will be invalid because more than one aggregation has been formed within an operating unit or because operating mineral interests in two or more operating units have been improperly aggregated. For any year in which an invalid basic aggregation exists, each operating mineral interest included in such aggregation shall be treated for all purposes as a separate property unless consent is obtained from the Commissioner to treat any such interest in a different manner. Consent will be

granted in appropriate cases as, for example, where the taxpayer demonstrates that he inadvertently formed an invalid basic aggregation. The provisions of this subdivision may be illustrated by the following examples:

Example 1. In 1953, taxpayer A owned six operating mineral interests, designated No. 1 through No. 6, and he continued to own and operate such interests during 1954. He acquired no other operating mineral interests during such year. All six of these operating mineral interests form one operating unit. Assume that A elected under section 614(b) to aggregate operating mineral interests Nos. 1 through 3 into one aggregation and Nos. 4 through 6 into another aggregation. Since A has formed two aggregations in one operating unit, they are invalid basic aggregations. Therefore, interests Nos. 1 through 6 must be treated as separate properties for 1954 and all subsequent taxable years unless consent is obtained from the Commissioner to treat any of such interests in a different manner.

Example 2. Assume the same facts as in example 1 and assume also that, in his return for 1954, A correctly elected to aggregate all six operating mineral interests into one aggregation under section 614(b). Assume further that all these operating mineral interests continued to be in one operating unit for the years 1954, 1955, and 1956 but that, because of changes in the facts and circumstances of A's operations, in 1957 operating mineral interests Nos. 1, 2, and 3 became a part of one operating unit and Nos. 4, 5, and 6 became a part of another operating unit. Notwithstanding the change in operations, the election made by A shall continue to be binding unless consent to change such election is obtained from the Commissioner.

(iii) *Invalid additions.* The term *additions* refers to the additions that a taxpayer makes by electing to aggregate an operating mineral interest with an aggregation formed in a previous year. Such additions will be invalid where the taxpayer either elected to aggregate an operating mineral interest with an invalid basic aggregation or elected to aggregate an operating mineral interest which is part of one operating unit with an aggregation of operating mineral interests which is a part of another operating unit. An operating mineral interest which is invalidly added to either a valid basic aggregation or to an invalid basic aggregation shall be considered as a separate property unless consent is obtained from the Commissioner to treat such interest in a different manner. The following are examples of invalid additions:

Example 1. In 1953, taxpayer A owned six operating mineral interests designated No. 1 through No. 6 and he continued to own and operate such interests during 1954. He acquired no other operating mineral interests during that year. Nos. 1 through 3 formed one operating unit and Nos. 4 through 6 formed another operating unit. In his return for 1954, A incorrectly elected to aggregate all six operating mineral interests into one aggregation under section 614(b). In 1955, A acquired and commenced development of operating mineral interest No. 7 which is correctly a part of the operating unit of which operating mineral interests Nos. 1, 2, and 3 are a part. A elected under section 614(b), for the year 1955, to aggregate operating mineral interest No. 7 with the invalid basic aggregation composed of Nos. 1 through 6. Since operating mineral interest No. 7 was aggregated with an invalid basic aggregation, it is an invalid addition and must be treated as a separate property unless consent is obtained from the Commissioner to treat it in a different manner.

Example 2. In 1953, taxpayer A owned nine operating mineral interests designated No. 1 through No. 9. During 1954, he continued to own and operate such interests and acquired no other operating mineral interest. Interests No. 1 through No. 3 form one operating unit, Nos. 4 through 6 form another operating unit, and Nos. 7 through 9 form a third operating unit. For the year 1954, A elected under section 614(b) to aggregate operating mineral interests Nos. 1, 2, 3, and 4 into one aggregation, to treat Nos. 5 and 6 as separate properties, and to aggregate Nos. 7, 8, and 9 into another aggregation. Assume that in 1955 A acquired and commenced development of operating mineral interest No. 10 which was a part of the operating unit composed of Nos. 1, 2, and 3. Assume further that he elected under section 614(b) to aggregate No. 10 with the aggregation composed of Nos. 7, 8, and 9. This would be an invalid addition to a valid basic aggregation since operating mineral interest No. 10 was not properly a part of the operating unit formed by Nos. 7, 8, and 9. Therefore, interest No. 10 must be treated as a separate property for 1955 and all subsequent taxable years unless consent is obtained from the Commissioner to treat it in a different manner. However, the valid basic aggregation composed of interests Nos. 7 through 9 is not affected by the invalid addition of interest No. 10.

Example 3. Assume the same facts as in example 2 except that A elected under section 614(b) in 1955 to aggregate No. 10 with the aggregation of Nos. 1 through 4. This would also be an invalid addition because the aggregation composed of Nos. 1 through 4 is an

invalid basic aggregation since operating mineral interest No. 4 is not a part of the operating unit consisting of Nos. 1, 2, and 3. Therefore, interest No. 10 must be treated as a separate property for 1955 and all subsequent taxable years unless consent is obtained from the Commissioner to treat such interest in a different manner.

(e) *Termination of election*—(1) *Taxable years beginning after December 31, 1963, in the case of oil and gas wells.* In the case of oil and gas wells, the election provided for under section 614(b) and paragraph (a) of this section to form an aggregation of separate operating mineral interests shall not apply with respect to any taxable year beginning after December 31, 1963. In addition, if a taxpayer treated certain separate operating mineral interests in a single tract or parcel of land as separate rather than as an aggregation and decides to continue such treatment for taxable years beginning after December 31, 1963, he must make an appropriate election under section 614(b) as amended by the Revenue Act of 1964. See §1.614–8.

(2) *Taxable years beginning after December 31, 1957, in the case of mines.* Except in the case of oil and gas wells, the election provided for under section 614(b) and paragraph (a) of this section to form an aggregation of separate operating mineral interests shall not apply with respect to any taxable year beginning after December 31, 1957. Thus, if a taxpayer makes a binding election under section 614(b) to form an aggregation of separate operating mineral interests within an operating unit for taxable years beginning before January 1, 1958, he must make a new election for the first taxable year beginning after December 31, 1957, under section 614(c) within the time prescribed in §1.614–3 if he wishes to aggregate any separate operating mineral interests within such operating unit. A new election must be made under section 614(c) notwithstanding the fact that the aggregation formed under section 614(b) would constitute a valid aggregation under section 614(c). Failure to make such an election within the time prescribed shall constitute an election to treat each separate operating mineral interest within the operating unit as a separate property for taxable years beginning after December 31, 1957.

(3) *Taxable years beginning before January 1, 1958, in the case of mines.* An election made under section 614(b) and paragraph (a) of this section to form an aggregation of separate operating mineral interests within a particular operating unit shall not apply with respect to any taxable year beginning prior to January 1, 1958, for which the taxpayer makes an election under section 614(c)(3)(B) and paragraph (f)(2) of §1.614–3 which is applicable to any separate operating mineral interest within the same operating unit. The provisions of this subparagraph may be illustrated by the following examples:

Example 1. In 1953, taxpayer A owned six separate operating mineral interests, designated No. 1 through No. 6, which he operated as a unit. Operating mineral interests Nos. 1 through 5 comprise a mine, and operating mineral interest No. 6 represents one mineral deposit in a single tract of land which is being extracted by means of two mines. Taxpayer A previously made a binding election under section 614(b) to aggregate operating mineral interests Nos. 1 through 5 and to treat operating mineral interest No. 6 as a separate property. Under section 614(c)(2) and (3)(B) taxpayer A makes an election which is applicable for the taxable year 1954 and all subsequent taxable years to treat operating mineral interest No. 6 as two separate operating mineral interests. Therefore, the previous election of taxpayer A to aggregate operating mineral interests Nos. 1 through 5 under section 614(b) does not apply. Unless taxpayer A also makes an election to aggregate operating mineral interests Nos. 1 through 5 as one property under section 614(c)(1) and (3)(B) within the time prescribed in paragraph (f)(2) of §1.614–3, he shall be deemed to have made an election to treat each of such interests as a separate property for 1954 and all subsequent taxable years.

Example 2. In 1953, taxpayer B owned six separate operating mineral interests, designated No. 1 through No. 6, which he operated as a unit. Operating mineral interests Nos. 1 through 3 comprise a mine and Nos. 4 through 6 comprise a second mine. Taxpayer B previously made a binding election under section 614(b) to aggregate operating mineral interests Nos. 1 through 8 and to treat Nos. 4 through 6 as separate properties. Under section 614(c) (1) and (3)(B) taxpayer B makes an election which is applicable for the taxable year 1954 and all subsequent taxable years to aggregate operating mineral interests Nos. 4 through 6 as one property. The

previous election of the taxpayer under section 614(b) to aggregate operating mineral interests Nos. 1 through 3 does not apply even though such aggregation would constitute a valid aggregation if formed under section 614(c)(1). Therefore, if taxpayer B wishes to continue to treat operating mineral interests Nos. 1 through 3 as one property, he must also make an election to do so under section 614(c) (1) and (3)(B) within the time prescribed in paragraph (f)(2) of § 1.614–3.

(4) *Bases of separate operating mineral interests.* If an aggregation formed under section 614(b) is terminated by reason of the provisions of section 614(b)(4)(A), is terminated under section 614(b)(4)(B) for any taxable year after the first taxable year to which the election under section 614(b) applies, or is terminated by reason of the provisions of section 614(b) as amended by the Revenue Act of 1964, the bases of the separate operating mineral interests (and combinations thereof) included in such aggregation shall be determined in accordance with the rules contained in paragraph (a)(2) of § 1.614–6 as of the first day of the first taxable year for which the termination is effective. However, if by reason of the provisions of section 614(b)(4)(B), an election to aggregate under section 614(b) does not apply for any taxable year for which such election was made, the bases of the separate operating mineral interests included in the aggregation formed under section 614(b) shall be determined without regard to the election under section 614(b).

(f) *Alternative treatment of separate operating mineral interests in the case of oil and gas wells.* For rules relating to an alternative treatment of separate operating mineral interests in the case of oil and gas wells, see § 1.614–4.

[T.D. 6524, 26 FR 147, Jan. 10, 1961, as amended by T.D. 6859, 30 FR 13700, Oct. 28, 1965]

§ 1.614–3 Rules relating to separate operating mineral interests in the case of mines.

(a) *Election to aggregate separate operating mineral interests*—(1) *General rule.* Except in the case of oil and gas wells, a taxpayer who owns two or more separate operating mineral interests, which constitute part or all of the same operating unit, may elect under section 614(c)(1) and this paragraph to form an aggregation of all such operating mineral interests which comprise any one mine or any two or more mines and to treat such aggregation as one property. The aggregated property which results from the exercise of such election shall be considered as one property for all purposes of subtitle A of the Code. The preceding sentence does not preclude the use of more than one account under a single method of computing depreciation or the use of more than one method of computing depreciation under section 167, if otherwise proper. Any reasonable and consistently applied method or methods of computing depreciation of the improvements made with respect to the separate properties aggregated may be continued in accordance with section 167 and the regulations thereunder. It is not necessary for purposes of the aggregation that the separate operating mineral interests be included in a single tract or parcel of land or in contiguous tracts or parcels of land so long as such interests constitute part or all of the same operating unit. A taxpayer may elect to form more than one aggregation of separate operating mineral interests within one operating unit so long as each aggregation consists of all the separate operating mineral interests which comprise any one mine or any two or more mines. Thus, no aggregation may include any separate operating mineral interest which is a part of a mine without including all of the separate operating mineral interests which comprise such mine in the first taxable year for which the election to aggregate is effective. Any separate operating mineral interest which becomes a part of such mine in a subsequent taxable year must also be included in such aggregation as of the taxable year that such interest becomes a part of such mine. The taxable year in which such interest becomes a part of such mine shall be determined upon the basis of the facts and circumstances of the particular case. If a taxpayer fails to make an election under this paragraph to aggregate a particular operating mineral interest (other than an interest which becomes a part of a mine with respect to which the interests have been aggregated in a prior taxable year) on or before the last

day prescribed for making such an election, such interest shall be treated as if an election had been made to treat it as a separate property. A taxpayer may not aggregate operating mineral interests and nonoperating mineral interests such as royalty interests. For definitions of the terms *operating mineral interest*, *operating unit*, and *mine*, see respectively paragraphs (c), (d), and (e) of this section.

(2) *Aggregation in subsequent taxable years.* If the taxpayer has made an election under section 614(c)(1) for a particular taxable year with respect to any operating mineral interest or interests within a particular operating unit, and if, for a subsequent taxable year, the taxpayer desires to make an election with respect to an additional operating mineral interest within the same operating unit, then whether or not the taxpayer may elect to include such additional interest in an aggregation or treat it as a separate property depends upon the nature of such additional interest and of the taxpayer's previous elections. If the additional interest is a part of a mine with respect to which the other interests have been aggregated, the additional interest must be included in such aggregation. If the additional interest is a part of a mine with respect to which the other interests have been treated as separate properties, the additional interest must be treated as a separate property. If the additional interest is part of a mine which previously consisted of only a single interest which has not been aggregated with any other mine, such additional interest may be aggregated or treated as a separate property. If the additional interest is an entire mine, it may, at the election of the taxpayer, (i) be added to any aggregation within the same operating unit, (ii) be aggregated with any other single interest which is an entire mine provided both interests are within the same operating unit even though such single interest has previously been treated as a separate property, or (iii) be treated as a separate property.

(b) *Election to treat a single operating mineral interest as more than one property*—(1) *General rule.* Except in the case of oil and gas wells, a taxpayer who owns a separate operating mineral interest in a mineral deposit in a single tract or parcel of land may elect under section 614(c)(2) and this paragraph to treat such interest as two or more separate operating mineral interests if such mineral deposit is being developed or extracted by means of two or more mines. In order for this election to be applicable, there must be at least two mines with respect to each of which an expenditure for development or operation has been made by the taxpayer. The election under section 614(c)(2) may also be made with respect to a separate operating mineral interest formed by a previous election under section 614(c)(2) at such time as the mineral deposit previously allocated to such interest is being developed or extracted by means of two or more mines. If there is more than one mineral deposit in a single tract or parcel of land, an election under section 614(c)(2) with respect to any one of such mineral deposits has no application to the other mineral deposits. The election under section 614(c)(2) may not be made with respect to an aggregated property or with respect to any operating mineral interest which is a part of any aggregation formed by the taxpayer unless the taxpayer obtains consent from the Commissioner. Such consent will not be granted where the principal purpose for the request to make the election is based on tax consequences. Application for such consent shall be made in writing to the Commissioner of Internal Revenue, Washington, DC 20224. The application must be accompanied by a statement setting forth in detail the reason or reasons for the request to exercise the election with respect to an aggregated property.

(2) *Allocation of mineral deposit.* If the taxpayer elects to treat a separate operating mineral interest in a mineral deposit in a single tract or parcel of land as more than one separate operating mineral interest, then all of such mineral deposit therein and all of the portion of the tract or parcel of land allocated thereto must be allocated to the newly formed separate operating mineral interests. A portion of such mineral deposit and such tract or parcel of land must be allocated to each such newly formed separate operating